## REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 2-5, 7, 8, 10-12, 14, 15, and 17-19 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate status identifier.

After amending the claims as set forth above, claims 2-24 are now pending in this application.

### 1. Examiner Remarks Regarding Claims 7-13 and 14-20

In section 5 of the Office Action, the Examiner stated that "should claims 7-13 be found allowable, claims 14-20 will be objected to under 37 CFR 1.75, as being a substantial duplicate thereof. . . . In this case, the preamble of claim 14 carries no patentably distinguishing weight, with regard to claim 7 of this application, since it is merely a 'for use' which has no clear nexus with the body of the claim."

Claim 14 has been amended to recite a combination including, among other elements, "wherein the evaluation criteria include an optimized animal growth rate," to obviate the potential objection to claims 14-20 as being substantial duplicates of claims 7-13.

### 2. Double-Patenting Rejection of Claims 2, 5, 6, 7, 9, 10, 12-14, 16, 17, 19, and 20-24

In section 7 of the Office Action, claims 2, 5-7, 9, 10, 12-14, 16, 17, 19, and 20-24 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 4, 11, 13, 15, 16, 18, 19, and 23 of U.S. Patent No. 6,658,308.

Applicants have submitted herewith a timely filed terminal disclaimer with respect to the parent U.S. Patent No. 6,658,308. Accordingly, the obviousness type double patenting rejection of claims 2, 5-7, 9, 10, 12-14, 16, 17, 19, and 20-24 is moot and withdrawal of the rejection is respectfully requested.

### 3. Rejection of Claims 3-5, 8-12, 15-19, and 22-24 Under 35 U.S.C. § 112 ¶ 2

In section 9 of the Office Action, claims 3-5, 8-12, 15-19, and 22-24 were rejected under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and claim the subject matter which Applicants regard as the invention.

Regarding claims 3, 8, and 15, the Examiner stated that "there is no clear and proper functional antecedence for 'a level of nucleic acid material' having been 'determined to optimize a criteria.' Also, the term 'optimize' is deemed to be a term of degree, which has not been clearly and properly defined within the claim language." Claims 3, 8, and 15 have been amended to provide proper antecedence for the claim terminology.

With respect to the term "optimize," while the term "optimizes" remains in the rejected claims, Applicants submit that the limitation "determining a level of nucleic acid material that optimizes a criteria" is definite and compliant with 35 U.S.C. § 112 ¶ 2. For purposes of illustration and not limitation, Applicants refer to paragraph [0031] of the present application, which states that "[t]he evaluation criteria can be a particular criteria that a producer would like to optimize." Furthermore, paragraph [0003] provides a number of non-limiting examples of "optimizing" a criteria, such as maximizing growth and production rates of animals in the shortest amount of time, maximizing total muscle gain, and minimizing weight loss during illness. Accordingly, Applicants submit that the use of the term "optimizes" is compliant with 35 U.S.C. § 112 ¶ 2.

Regarding claims 4, 11, and 18, the Examiner stated that "there is no clear and proper antecedence for 'one additional nutrient component,' since a first such component has not previously presented in the claims." Claims 4, 11, and 18 have been amended to remove the term "additional" and are now compliant with 35 U.S.C. § 112 ¶ 2.

Regarding claims 5, 12, and 19, the Examiner stated that "there is no clearly presented nexus between the introduced step and the remainder of the body of the claimed method." Claims 5, 12, and 19 have been amended to more clearly present the nexus between the rejected claims and the base claims, and are now compliant with 35 U.S.C. § 112 ¶ 2.

Regarding claims 10 and 17, the Examiner stated that "there is no clear and proper antecedence for 'the effect of the optimization weighting data,' such that the formulation data can be representative thereof." Claims 10 and 17 have been amended to provide proper antecedence and are compliant with 35 U.S.C. § 112 ¶ 2.

Applicants submit that claims 3-5, 8-12, 15-19, and 22-24 are now definite and compliant with the requirements of 35 U.S.C. § 112 ¶ 2. Accordingly, withdrawal of the rejection of claims 3-5, 8-12, 15-19, and 22-24 is respectfully requested.

## 4. Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

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